
*** REQUESTOR: RHILL - HILL, RAY F. PLANNING ***

*** S Y S M I N B A S K E T P R I N T ***

MESSAGE ID: 115267 DATE: 11/24/99 TIME: 03:36pm PRIORITY: 000

TO: RHILL - HILL, RAY F.
PLANNER III
PLANNING

FROM: JHUFF - HUFF, JOHN
FIRE

SUBJECT: SP1423C HIGMARK ESTATES
RAY, I HAVE REVIEWED THE SP1423C HIGHMARK ESTATES CUP
AND FIND THE HYDRANT SPACING EXCEEDS THE 420 FT MAXIMUM SPACING
AS DEFINED IN THE DESIGN STANDARDS. THIS SHOULD BE CORRECTED BEFORE
LFD CAN ACCEPT THIS DESIGN.

Sent to: RHILL HILL, RAY F. (to)

LOWER PLATTE SOUTH
NATURAL RESOURCES DISTRICT



3125 Portia St., Box 83581, Lincoln NE 68501-3581
(402) 476-2729 • FAX (402) 476-6454

Memorandum

Date: November 29, 1999
To: Ray Hill, City Planning Department
From: Ed Ubben, Projects Coordinator
Subject: Highmark Estates CUP, SP 1423C

Dear Ray:

We need to know what the plan for mitigation is due to the loss of wetlands for the east drainage area.

There are many significant buildings in the floodplain. There appears to be an extensive amount of fill that is to be imported.

Erosion control Note #1-- "as necessary" gives no indication as to what is actually planned and where. Plans need to show specific BMP's to review them. The project is too large to be controlled by a single silt fence on each side of the drainage.


The project is over 22 acres but only 11.6 acres are included in the drainage calculations, this leaves out several significant buildings with no runoff calculations. The drainage plan shows a pond on the northwest corner of the property. Is this pond existing or planned? If planned, is this a detention facility? A project of this size should have one. If this is a detention facility we need the design calculations.

EU/eu

pc: file

MEMORANDUM

TO: Ray Hill

FROM: Nicole Fleck-Tooze 

RE: HiMark Estates Community Unit Plan SP# 1423C

DATE: December 27, 1999

1. This reach of Antelope Creek east of 84th Street is just outside of the FEMA study area limits and the boundaries of the 100-year floodplain and floodway have been provided by the applicant. Section 27.55.040(g) of the Floodplain Ordinance states that when base flood elevation data have not been provided on the official map, the City should "utilize any base flood elevation and floodway data available from a federal, state, or other source, as criteria for requiring that new construction, substantial improvements, or other developments in the floodplain meet the standards of this chapter."
2. The purpose of the special permit and CUP is to encourage the creative design of building areas with open space and to protect the character of the area. This area has a number of important natural features such as the natural drainageway, floodplain, wetlands, and tree masses.
3. Section 27.63.010 of the Zoning Ordinance relative to procedures for special permits states: "The Planning Commission shall impose such conditions as are appropriate and necessary to ensure compliance with the comprehensive plan and protect the health, safety, and general welfare in the issuance of any such special permits."
4. Lincoln's Land Use Plan designates the Antelope Creek corridor as Natural/Environmentally Sensitive. In addition, the Comprehensive Plan includes the following specifications relative to natural features and environmental resources:
 - *"Extensive development within floodplains decreases the water retention capabilities of the land and can cause serious flooding downstream" (p. 153).*
 - *"Maintaining the capacity of our flood ways and flood plains to contain and carry flood waters and prevent damage should be an important consideration in all planning and development" (p. 72).*
 - *"Maintain, preserve and enhance existing wetlands and restore*

degraded wetlands" (goal, p. 70).

- *"Protect natural stream corridors and enhance man-made open channels for the purpose of improving water quality and reducing flood damage and erosion while retaining open space" (goal, p. 70).*
- *"Make preservation, protection and enhancement of our natural resource and open space an integral part of the current and long range planning and development processes" (goal, p. 74).*
- *"Respect the natural character of areas by incorporating natural features into new developments and adjacent existing projects" (goal, p. 74).*

5. During meetings on June 3rd and June 11th, 1999 the developer was encouraged to revise the preliminary site plan to preserve the wetlands and trees on the site and to maintain the flood storage capacity of Antelope Creek. It was indicated that a Community Unit Plan provides a good opportunity to preserve natural features by shifting density from one portion of a site to another. Alternatives were discussed to cluster buildings outside of the floodplain while maintaining the same density and to locate parking areas, rather than buildings, within the floodplain to reduce the amount of necessary fill. It does not appear that revisions were made to incorporate these suggestions.
6. A large portion of the wetlands on the site, particularly those along a tributary to Antelope Creek, appear to be impacted by the proposed development. During the June 3rd meeting the developer agreed to determine whether a 404 permit had already been obtained or would be required for the impact to the wetlands on the site. However, no additional information regarding this was submitted with the plans.
7. While the floodplain and floodway limits have been provided, there appears to be no 100-year flood elevation included on the plans and it is not clear whether building areas are protected from flooding. The 100-year flood elevation should be indicated on the grading and drainage plan and all buildable areas should be shown to be one foot above the 100-year flood elevation.
8. It would be desirable for the applicant to indicate how much fill will be placed in the 100-year floodplain to accomplish this development.
9. Proposed contours on the Grading Plan do not appear to be shown in an

established datum. The Grading Plan should be revised to show, at a minimum, all contours in City datum (which was required at the time this project was submitted) and to indicate the datum used on the Grading Plan.

10. No calculations or supporting documentation have been provided to demonstrate how the floodplain and floodway limits were derived. This information needs to be submitted for review. In addition, it is not clear whether the floodway calculations assume the creation of the lake.
11. There is grading for a driveway bridge, lake, and water feature within the proposed floodway and no information has been submitted to show how these elements may or may not impact flows through Antelope Creek. The driveway crossing appears to create a dam through the center of Antelope Creek, however the grading information for this structure appears to be incomplete.
12. Certification should be provided by a qualified engineer indicating that the proposed development and grading within the floodway will cause no increase in the 100-year flood elevation.
13. There is a large tree mass associated with the Antelope Creek drainageway through this area. The Landscape Plan approved with the HiMark Estates Preliminary Plat and CUP showed no trees to be removed in this area. The Landscape Plan proposed with this Special Permit application also shows no existing trees to be removed. It does appear possible to cluster the development and design the site in such a way as to preserve the majority of existing trees. *However, the development proposed with the site plan and grading plan appears to indicate that the majority of the trees on the site will be removed.* It would be desirable to revise the plans to preserve a greater number of trees. In any case, any trees to be removed need to be clearly indicated on the Landscape Plan.

X:\FILES\PLANNING\FLOODPLN\highmrk3.NFT.wpd

Subject: Highmark Estates

Date: Mon, 3 Jan 2000 08:07:53 -0800

From: "Rabbe, Randolph M NWO" <Randolph.M.Rabbe@nwo02.usace.army.mil>

To: "Ray Hill" <rhill@ci.lincoln.ne.us>

CC: "Nicole Fleck-Tooze" <ntooze@ci.lincoln.ne.us>

Ray, I have briefly looked at the developement project for Highmark Estates. There appears to be 'waters of the U.S.' that may be impacted by this development. The applicant will need to apply for a Clean Water Act authorization (404 permit) from the Corps of Engineers prior to any work being done on this project. We will need a detailed delineation of the area to see if any wetlands or other 'waters' are being impacted and the extent of impacts to those resources. If Antelope creek (or adjacent draineages or wetlands) are being impacted, the applicant will need to fill out an application from us. Please have them contact our office for further assistance at 402-896-0896. Thanks for your time.

Michael Rabbe

ITEM NO. 4.3: SPECIAL PERMIT NO. 1423C
(p.265 - Cont'd Public Hearing - 1/26/00)

Memorandum

January 25, 2000

TO: Ray Hill, Planning
by FAX

FR: Lynn Johnson, Parks and Recreation *Lynn Johnson*

RE: HiMark Estates Community Unit Plan, Multiple Family Area S.P.#1423-C

Cc: Dennis Bartels, Public Works by FAX

Parks and Recreation Department staff have reviewed the above referenced development proposal and have the following comments.

- 1) Please accept my apologies for the tardiness of this memo. As you know, a 20 foot wide easement for a commuter/recreation trail along Antelope Creek was included as part of the preliminary plat. The alignment of this easement is consistent with the Trails Network plan contained within the Lincoln City - Lancaster County Comprehensive Plan. In addition to the trail alignment, grade separated crossings are depicted at South 84th Street and Old Cheney Road abutting the subject area. These grade separated crossings are vitally important to the safety and convenience of users of the trail. Without these grade separated crossings trail users would be required to cross two legs of the intersection of Old Cheney Road and South 84th Street. Therefore it is essential that plans for the multi-family area of the HiMark development continue to allow for pedestrian access along Antelope Creek.

JAN 25 2000

029

PIERSON, FITCHETT, HUNZEKER, BLAKE & KATT
Law Firm

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January 12, 2000

Kathleen Sellman
Planning Director
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

RE: Special Permit No. 1423C
Amendment to the HiMark Estate Community Unit Plan

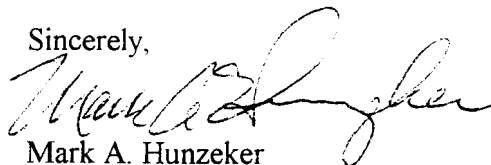
Dear Kathleen:

We request that the public hearing on the above-captioned matter be deferred and held open for the Planning Commission meeting scheduled for January 26, 2000.

In addition, we request that the published notice for that public hearing include a request by the applicant for a waiver of the 40-foot setback between the multiple family buildings and Lot 48 Irregular Tracts, Section 11, Township 9 North, Range 7 East, and between the multiple family buildings and Lots 19, 20, and 21, Block 4, of the HiMark Estates Community Unit Plan. Also we request a waiver of the required parking ratio for community unit plans from 2 spaces per unit to 1.70 spaces per unit.

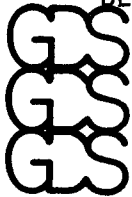
Thank you very much for your consideration.

Sincerely,



Mark A. Hunzeker
For the Firm

MAH:la



24 January 2000

Design Engineering & Associates
4224 South 133rd Street
Omaha, NE 68137

Re: 84th & Old Cheney Development
Lincoln, Nebraska

Gentlemen:

On Saturday afternoon, 21 January 2000, I walked most of the subject property with the proposed site Grading Plan developed by your firm in hand. We performed the inspection to get a better handle on the existing woody vegetation conditions of the site.

The woody vegetation or major forest type of the site is a mix of what the United States Department of Agriculture, Forest Service classifies as "Cottonwood" and "Eastern Redcedar." The plurality of the tree species commonly associated with the Cottonwood forest type in Nebraska include silver maple, boxelder, eastern redcedar, mulberry, and green ash. The plurality of the trees species commonly associated with the Eastern Redcedar forest type in Nebraska include cottonwood and elm. The majority of the existing native vegetation has a Nebraska Forest Service "Species Class Rating" of 20-30 out of 100. Species class criteria include: form, color, growth habit, flowering and fruiting characteristics, longevity, insect and disease resistance, and maintenance requirements. Many people would call the majority of the trees on this site as "weed trees" or "junk trees."

There are a few introduced landscape type trees in the southeast corner of the property near the existing residence that are worthy of limited efforts to save.

The proposed Landscape Planting Plan for the site will include mixture of landscape quality conifer, selected hardwood, and ornamental trees.

We look forward to working with you and the development team on this project.

Sincerely,

Gene D. Svensen, R.L.A.

GENE D. SVENSEN, R.L.A.

PROFESSIONAL STATUS:

- Registered Professional Landscape Architect, Nebraska #79, 1968.
- National Record Certificate, Council of Landscape Architectural Registration Boards (CLARB) #50, 1975.
- International Society of Arboriculture, Certified Arborist, #MW3896, 1999.

EDUCATION:

- Bachelor of Science - Landscape Architecture, 1966, Iowa State University, Ames, Iowa.

EXPERIENCE:

- Gene D. Svensen & Associates was founded in 1982. The firm has prepared landscape architectural design documents for Federal, State, and municipal governments as well as the private sector. The professional services have included all phases of the design process from project feasibility through construction observation.

MEMBERSHIPS:

- American Society of Landscape Architects (ASLA), Member.
- International Society of Arboriculture, (ISA), Member.
- Cosmopolitan International, Omaha I-80 Club, Charter Member.

HIMARK ESTATES CUP, SP1423-C

Proposed Amendments

- Item 1.1.2 A vehicular access easement from ~~a~~ the west driveway in this site to Lot 48 I.T. for a single-family dwelling only.
- Item 1.1.3 A 25-foot wide easement for vehicle access from a driveway to S. 88th Street.
- Item 1.1.4 ~~The driveway access to Old Cheney Road east of Antelope Creek eliminated.~~
- Item 1.1.6 ~~A 20-foot wide bike trail easement along Antelope Creek.~~
- Item 1.1.8 ~~A 40-foot setback between the multiple-family buildings and Lot 48 I.T. and Lots 19, 20, and 21, Block 4.~~
- Item 1.1.17 ~~The buildings moved outside the 100-year flood plain and the parking areas in the flood plain not raised more than 1 foot below the 50-year flood plain.~~
- Item 1.1.19 Add street trees to the landscape plan and identify the trees on the site that will be ~~removed~~ retained.
- Item 1.1.20 A maximum of ~~240~~ 300 dwelling units.
- Item 1.3 ~~The 404 permit regarding the wetlands on the site.~~
- Item 2 Approval permits a maximum of ~~240~~ 300 dwelling units.

New Conditions:

- 3.4 Prior to Council action on this permit, the applicant shall agree with the Parks and Recreation Department upon a suitable bike trail easement between 84th Street and Old Cheney Road.
- 3.5 The 404 permit shall be obtained prior to the fill of any wetlands on the site.

**SPECIAL PERMIT NO. 1423C
AMENDMENT TO THE
HIMARK ESTATES COMMUNITY UNIT PLAN**

PUBLIC HEARING BEFORE PLANNING COMMISSION: January 12, 2000

Members present: Hunter, Steward, Duvall, Hopkins, Krieser, Newman, Taylor and Bayer; Schwinn absent.

Planning staff recommendation: Denial.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant and stated that he has submitted a letter to the Planning Director requesting that this matter be deferred for two weeks in order to resolve a number of the outstanding issues.

Hopkins moved to defer for two weeks, with continued public hearing and administrative action scheduled for January 26, 2000, seconded by Newman and carried 8-0: Hunter, Steward, Duvall, Hopkins, Krieser, Newman, Taylor and Bayer voting 'yes'; Schwinn absent.

There was no other public testimony.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION: January 26, 2000

Members present: Steward, Duvall, Hunter, Krieser, Newman, Taylor and Schwinn; Bayer and Hopkins absent.

Ray Hill of Planning staff submitted a letter from the Parks Department indicating their desire to preserve the 20' wide bicycle path through this area of the project.

Proponents

1. **Mark Hunzeker** appeared on behalf of the applicant. This is a project that is proposed for the northeast corner of 84th and Old Cheney Road as part of HiMark Estates. The proposed access points are on Old Cheney with the main entrance east of Antelope Creek, connecting on both sides of Antelope Creek with an exit only at Old Cheney. This will be an attractive project with a entryway with manned security. This is an amenity that a lot of people are beginning to look for in apartment communities. There will be three different clubhouses, one which will have a pool with a sand beach type facility; the others will have exercise facilities which will be oversized to accommodate members of the surrounding HiMark Estates CUP. The buildings will be somewhat unique in that they will be two stories on either end with three-story center

sections, with private entries to apartments. There will be a car wash within the complex for the residents; Internet access to each apartment; washers and dryers in each apartment; and full-sized enclosed balconies for each apartment. This will be a first class facility and will raise the level of rental units across the community.

Hunzeker noted that the staff is recommending denial. His concerns with the staff report come down to three areas: 1) access; 2) grading and drainage; and 3) aesthetic. With respect to access to the project, Hunzeker noted that the proposal shows two access points to Old Cheney with the main entrance being the eastern one, which is over 900' east of 84th Street. This is plenty of distance from 84th Street for a left-turn access off Old Cheney Road. The project involving the widening of 84th will improve that intersection at Old Cheney and will taper Old Cheney back to a two-lane section well before reaching their eastern entrance. The western access will probably become a right-out only when the city builds a median to channelize the intersection at 84th & Old Cheney. The developer simply wants an access point at the east entrance.

Hunzeker then referred to Condition #1.1.2, which requires them to provide vehicular access from this applicant's site to Lot 48, I.T. Lot 48 is the corner one-acre lot with a house on it. The developer does not object to providing an access to that site. However, the developer would propose to provide an easement from the west driveway to that property "for a single family dwelling only". Hunzeker does not know whether this is acceptable to staff or to the owner of the single family residence. The owner is concerned that he will have only a right-in right-out, but the developer is concerned about access all the way through the entire site. The problem is that this amounts to placing the burden on this project to provide a way for the city to avoid having to pay this gentleman for taking his access. Frankly, it gives him, at best, very circuitous access through this developer's site. The developer of this project will allow this access for the single family use but not for commercial uses. The developer does not want to be required to give up access through the site for more than a single family home. They will cooperate with the owner of that home for access through that driveway or through this developer's site.

Condition #1.1.3 requires an access to 88th Street. The developer will be willing to provide a 25' access easement for vehicular access to South 88th Street, but is not willing to give up access to Old Cheney Road east of Antelope Creek (Condition #1.1.4). Old Cheney Road is shown as a rural arterial in the Comprehensive Plan, meaning that someday it could be upgraded to an urban arterial or some day there may be a need to channelize it. If that's the case, this will be an easement that will give access out onto 88th Street at some point in the future.

Condition #1.1.6 deals with the bike trail. This developer does not object to working with Parks to provide a 20' easement for a bike trail, but the developer does not like the placement of this condition such that it has to be done before going on to City Council. Hunzeker requested that Condition #1.1.6 be moved to Condition #3.4. Parks plans to bring the bike trail under 84th Street north of this property. They need to get a

connection over to Old Cheney Road to connect through Vintage Heights, but there is no current plan to improve the box culverts under Old Cheney Road. Lynn Johnson of the Parks Department is agreeable to this change.

Condition #1.1.8 requires 40' setback between multiple family buildings and Lot 48 I.T. and other single family lots along 48th Street. This development is probably 100-150' at the nearest point from the multi-family buildings to the house on Lot 48. This developer will be providing substantial landscaping and, in addition, a wall between those two uses. He does not believe that the neighbor is objecting to this setback and he knows the owners of the single family lots along 88th Street are not objecting to this setback because those lots are also oversized. Hunzeker requested that Condition #1.1.8 be deleted.

Condition #1.1.17 speaks to the 100-year floodplain. Hunzeker purports that this is not a designated floodplain. The FEMA flood maps do not go east of 84th Street. This developer is providing elevations and limits of a 100-year storm along an open channel in accordance with the language of the subdivision and zoning ordinance. They are proposing to place fill in areas which would otherwise be inundated by a 100-year storm at their present elevations; however, they are leaving open a channel which will be adequate to convey a 100-year storm pursuant to their engineering calculations. Hunzeker believes that Public Works has reviewed their calculations and is comfortable. They have provided adequate detention because it was calculated into the original CUP; they are providing additional detention on this site. Hunzeker requested that Condition #1.1.17 be deleted. All of the rest of the conditions relative to grading and drainage are acceptable.

Condition #1.1.19 requires the developer to add street trees to the landscape plan. Hunzeker has no problem with that; however, this condition also requires identification of trees that will be removed. Hunzeker requested that the word "removed" be changed to "retained". He submitted a letter from a landscape architect who has walked the site and concludes that many people would call a majority of the trees on this site weed trees or junk trees. This is a site that is full of the type of vegetation which most people would not like to have in their yards. They will be replanting and reforesting this site with good vegetation.

Condition #1.1.20 and Condition #2 refer to the maximum of 240 units versus the 300 that this applicant is requesting. The original CUP provided for 240 but it was on a smaller area. This proposal is under the density which is allowable in the cluster areas in a CUP. The overall density of the HiMark CUP is way under the maximum and he believes that 300 is reasonable on a 20-acre site. There are no waivers being requested but they are simply asking to do what is allowable under the CUP.

Condition #1.3 refers to the 404 permit. Hunzeker requested that this condition be moved to Condition #3.5 so that it does not have to be done before being scheduled on the City Council agenda. They have .4 acre of wetlands that will be affected. This is

the end of an area that was modified as part of the golf course and street construction. There is about a 5-acre site that is very low and will be open and maintained by the homeowners association where they can create additional wetlands for mitigation, if necessary. This is a fresh water low grade wetland which they will replace with some high grade wetlands which will filter water that goes back into one of the ponds on the golf course.

Hunzeker submitted his proposed amendments to the conditions of approval in writing.

Hunter was curious about the concern from staff with regard to the future use of that corner (the McKeeman property) if it should ever be purchased. She knows they are considering a gated community. She wonders if a stub ending into that property might be amenable. Hunzeker stated that their preference is to keep that access along Old Cheney Road, but the concern of the owner is a median in the future resulting in right-in right-out only. The alternative is for McKeeman to have access through the site, coming around to the northeast corner. This developer is willing to give him that access; however, he is not real excited about it in that there will be some grade differential. There are good trees in the southeast corner of the site and on Mr. McKeeman's property. It would be inconvenient for him to come through the development, but this developer is willing to do what McKeeman wants to do relative to access as long as it is a single family house. He currently has a driveway off Old Cheney Road. McKeeman is not sure what will happen to that driveway with the widening of Old Cheney Road. There will be a median at the corner which will cover up his access and make it right-in right-out. He believes the City should buy his house and have it overwith.

Hunter understands that McKeeman is in posture to sell his property. Hunzeker believes the property is listed for sale. Hunter suggested that access could become a moot point if the property is purchased and turned into a corner development of some sort.

Steward asked Hunzeker to point out where they would propose to provide the easement for access to 88th Street. Hunzeker stated that they have not identified it specifically, but he pointed to 200' feet off of Old Cheney Road. All of the access throughout the site in one form or another accesses the parking lot. Their vision would be that in the event there is a median coming across their east entrance, they would still maintain that as the main entry point. But if eastbound on Old Cheney, there would be the opportunity to make a left turn and turn into the site. There is a road about 1/4 mi. north of Old Cheney that comes off of 84th Street along the golf course and he supposes, given the number of people who need to use it, it is probably not much worse than what First Federal will have on Cotner after O Street is widened.

Opposition

1. **Mike McKeeman** owns the house on the corner being referred to. The concern of his family is the access problem. They purchased the property 13 years ago and just wanted to live there, but everything is building up around them. He believes that they would have to access farther up on Old Cheney because of a median, which means they would have to come through this proposed development and he does not want to do that. He would consider a frontage road. They do have concerns about the future value of the property. If they allow it to happen in such a way so that they cannot sell the property for any kind of profit in the future, then they have defeated the economic value of their home. When this all came to be, he began to see the writing on the wall and began to think that they should try to sell and go somewhere else. The realtors believe that his residential property is devaluing. So that leaves the commercial possibility; however, it is not zoned for commercial. The only way to get out and reproduce what they have, would be to have commercial zoning. He is opposed because he will be stuck with no access. He understands Old Cheney will be widened and some of his property will be taken. He does not know what they will receive for this and no one is willing to tell him. He is surrounded by commercial to the south; behind him is all multi-family dwellings; and west will be commercial. If they cannot liquidate the property and they choose to live there, they will have to live under circumstances that will not be that great and will want to sell the property in the future as residential for profit. If that can't happen, they would like to look at other options.

Steward asked McKeeman whether, in his mind, he has had any discussions with this developer of any consequence about this developer purchasing his property and either allowing him to continue to live there for some date specific in the future or purchasing at a circumstance which gives him the opportunity for economic replacement in some other location. McKeeman stated that he has been approached over the years but he didn't have any desire to move until he realized the dye had been cast. He believes this is a fine project but it just doesn't go well with his property. He does not believe the developer is interested in buying his property. That is why he sent a letter to the Planning Department hoping for a change in the Comprehensive Plan.

Steward asked McKeeman how he feels about the movement within the boundary of this development in order to get into his property. McKeeman stated that the median will extend up Old Cheney Road. It could work on up the road if the median does not extend that far, but he is not thrilled about driving all through the complex to get to his home. He does not want to cross someone else's property. He has discussed a frontage road for access, but he understands that that is not possible due to the way the land is designed. The only place they do not have buildings on their property is along Old Cheney Road. If he knew how much the city was going to pay for what they take, it would be helpful.

Hunter stated that it has been her experience that situations like this have made the property such as McKeeman's more valuable. She thinks it could turn out to be very

positive as opposed to negative. She believes it is pretty handsome as far as future development with it being on the corner. McKeeman is not interested in not owning the property if he is going to live there.

Steward asked for discussion about the 240 versus 300 dwelling units. If 300 is permitted, why are we trying to restrict it to 240? Ray Hill of Planning staff explained that it has to do with the amount of land covered by buildings. Everything that is associated with reserving open space will be lost with the additional dwelling units and parking. Steward believes it is obvious that there is very little green space left other than down through the drainageway.

Steward inquired about the tree removal and replanting. Nicole Fleck-Tooze of Planning staff advised that there was a lot of information which was not included on the plans as to which trees would be removed and which would be preserved, but when overlaid on the grading plan it appeared that a great many of the trees would be removed. None of the proposed replanting is shown on the plans. Steward was concerned about the size of the trees and root bearing for flood protection.

Steward discussed the street configuration and traffic pattern. He asked how much flexibility, if any, the Commission has to try to accommodate the concerns of the corner lot. Buff Baker of Public Works clarified that this project does not take away the access from Lot 48 I.T. The existing access will operate until the time that 84th and Old Cheney are widened. Public Works does not have functional plans at this time for that widening. Public Works is trying to protect that property in the long term by asking for the access to 88th Street in case it does remainder residential. He estimated that the widening is 10 years out. The city will be taking islands through both directions of 84th and Old Cheney, which will limit that access. When those islands do appear, there is the option that that property will still be granted a right-in and right-out movement at the existing location. The staff is attempting to look at long range protection for that property at this time.

Hunter pointed out that if the proposed development were not there, and the residence was there and Old Cheney was widened, McKeeman would be in the same position as he is now. Baker concurred. It would still remain a right-in right-out movement for that property.

Schwinn was surprised that the city does not have grades set at 84th & Old Cheney. Baker has not looked at the particular grade at that intersection but they cannot change it too much more than what it currently is. Access onto 84th Street would still be real difficult with the existing grade and any proposed grade. Schwinn wondered whether it would be dropped like 70th Street. Baker advised that the city has asked for 140' of right-of-way on both streets so they will chew up an additional portion of McKeeman's one-acre site which will make it less developable.

Hunter asked whether the waterway as shown on the proposed plan is where it currently exists. Fleck-Tooze advised that Antelope Creek has been left alone. There is a secondary drainage way up to the east and north which will have grading through the channel. The wetlands are associated with that secondary drainage. This development is outside of the channel with the exception of a street crossing. There are building structures, parking areas and grading throughout the 100-year floodplain; however, they are not showing any building structures in the floodway. There is a proposed pond and beach area within the floodway. It is not clear whether the trees are to be preserved or not in the upper portion. It appears the trees would have to be removed in the lower portion due to grading.

Taylor does not worship trees, but his concern is whether there is a way to make this thing look aesthetic and beautiful. We can make things artificially more beautiful but less durable and less practical. The riparian vegetation has a beauty of its own. He wants to know if there is a way that it could be preserved to do the job that it should and do other things aesthetically around it. Fleck-Tooze suggested that there are several options. We have discussed some of the aesthetic issues with preserving the natural vegetation during the stormwater regulation changes. The replacement of some of the trees on a site has been discussed but there has been nothing shown on the plans here to indicate that the trees will be replaced on a one-to-one ratio, etc.

Steward asked whether Fleck-Tooze is inferring that this development would not conform to the recently passed stormwater ordinance. Fleck-Tooze concurred.

Response by the Applicant

With regard to the McKeeman property, Hunzeker advised that this developer has actively pursued the possibility of acquisition of that property but it is very difficult to do. It is very hard for him to replace what he has at a price that makes sense for a residential use. He has been offered a considerable premium and the possibility of remaining on the property for an extended period of time, but it is hard to replace what he has even at a substantial premium, even assuming the ability to stay there. This developer is willing to provide him access. The difficulty with a frontage road is that the grades along Old Cheney Road are very difficult. There is no plan to widen Old Cheney at the point where Antelope Creek crosses it. So you've got a box culvert there that drops off right at the edge of the road and to put in a frontage road would be almost impossible and would involve making improvements that would inevitably be torn out within just a short period of time.

Public Works has told this developer that there is no way they can have access to 84th.

With regard to the density, Hunzeker pointed out that this site is somewhat spread out. The buildings are not the typical three-story box that you see all around town. They are two-story on the ends; three-story in the middle; and there are as many individual access doors to individual units as possible. This is an attempt to create something

that is different from the standard 2-3 story box with center hallways. Yes, it would be possible to build bigger taller structures and park in the floodplain. It is also very, very ordinary and very, very unaesthetic in the sense that the buildings will not be the kind designed for this project.

Hunzeker believes this developer has submitted a landscape plan which far exceeds the existing design standards and is only about half of what they intend to do. The only reason they have not included every tree and shrub that they intend to plant is because they would end up having to modify the landscape plan and go through another administrative process every time there was a minor change. This developer has access to excellent trees. The owners of the property selling to this developer have a tree farm less than a mile from this location. There is every intention of this developer to reforest this site in a way that will make it very, very aesthetically pleasing.

Hunzeker agreed that this developer is putting some fill in floodplain areas. The drainageway that has wetlands in it is now on the site of the roadway which exists and has been filled and is at the end of a tube running under that street which drains a portion of the golf course. It is not as if this area has not already had some manipulation. It has been planned for that. This CUP was approved prior to anybody even putting the new regulations on the table. We didn't have the opportunity to plan that entire CUP around the new regulations. What we have done is made computations which prove that what we are leaving untouched will convey the 100-year storm; will not adversely affect other property; and the detention cells which are north of this property on the golf course are sufficient to detain the stormwater in accordance with the design standards. While it is true that they are filling some floodplain, they are retaining sufficient area to detain that storm in detention cells in accordance with design standards. He believes the results will be better than if the property is left alone.

Hunter asked whether the contention that the 100 year flood would be handled is according to an engineering study. Hunzeker indicated that the original computations were done by Olsson Associates and one of the requirements is that they provide a certification (Condition #1.1.15) signed by a qualified engineer indicating that the proposed development and grading within the floodway will cause no increase in the 100-year flood elevation. This is applying a no net rise standard where a no net rise standard simply does not exist. They will agree to comply, even though it is not required by ordinance.

Hunzeker also observed that one of his proposed amendments would require that they identify the trees that would be retained. Hunzeker would not commit to a one-to-one mitigation ratio. Less than 10% of what is there is worthy of any effort to preserve it.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 26, 2000

Duvall moved approval, with conditions, including the amendments requested by the applicant, seconded by Krieser.

Steward moved to amend to retain Condition #1.1.20 at 240 dwelling units, seconded by Hunter. Steward believes this condition is the root of all of his other concerns and apprehensions, except for one. It is clear, just intuitively without going through the calculations, that one of the reasons that the developer needs and wants more flexibility on the vegetation is because they are having to shape and change the entire site in order to accommodate the proposed density. It is being over-designed. He thinks there is an attempt to get more units than the site should be asked to carry. If there was less density there would be the need for less land forming, and less land forming would give the opportunity to preserve more of the vegetation. He agrees with the staff recommendation to not change the density.

Schwinn is against the motion to amend. Staff would probably go for the 300 if they redesigned the buildings without as large a footprint. As we look into our smart growth issues and urban planning for the future, we have asked for higher densities on parcels that are being used in rental situations to create more open space. This project has open space through the very center. The density is well below what it should be. Maybe we should raise the density beyond 300 to make proper use of the whole section of ground. He believes that what the developer is trying to do is somewhat of a new concept for Lincoln. If people do not like the rental unit they have the option to move out. The developer is willing to gamble that this concept will work. He saw this type of project all over in Dallas.

Duvall believes the density is quite low and this is the direction we are trying to move.

Steward further commented that new urbanism also respects the landscape and respects the context in which it is placed. Density is not an excuse or reason to promote new urbanism. There are areas in this city that should have higher density. But this community is in the process of speaking about flood control and stormwater conditions and this project is close enough to that principle. How can we come along on the heels of that decision and approve something that does not conform?

Hunter has seen a tremendous number of these gated type communities. It is something new to Lincoln but they are usually very beautiful in terms of what they do for the community in creating community environments. She is torn. She heard that this development is being designed to handle the 100-year storm and that the water is +being channeled through there in the most normal path that it was before with some fill on the sides, but the 100-year flood water is still being managed. This is an issue to her but she thinks this development is set up to handle it. Duvall noted that Olsson Engineering has certified to that issue.

Taylor's concern is fair treatment. It sets a precedent. He believes that we have to take it one step at a time. We want to improve the situation rather than make it worse.

Motion to amend Condition #1.1.20 to retain 240 dwelling units failed 3-4: Taylor, Newman and Steward voting 'yes'; Duvall, Hunter, Krieser and Schwinn voting 'no'; Bayer and Hopkins absent.

Taylor made a motion to retain the staff language in Condition #1.1.19, seconded by Steward. Schwinn noted that this would require the developer to identify every little seedling on the property. Ray Hill of Planning staff explained that the reason they are being asked to identify the trees that are removed is so that we know what trees have been removed from the site. Staff will work with the applicant as to the size of the tree to be identified. We would probably be talking about one inch in diameter as the minimum size. There is a standard as to size and height.

Steward does not believe we are asking the developer to count every seedling or shrub. Steward suggested that the applicant be required to identify the trees on the site that are 3" caliper or above that they propose will be removed. This became the motion to amend Condition #1.1.19. Motion carried 4-3: Steward, Newman, Taylor, and Schwinn voting 'yes'; Duvall, Hunter and Krieser voting 'no'; Bayer and Hopkins absent.

Discussion on main motion, as amended. Newman shares Steward's concerns. 300 is too many. She also hesitates to endorse gated communities.

Steward believes the variation of the building units would be very attractive but there are too many and the footprint is taking up too much of the site. In spite of attractive gated communities, he does not believe they make a good community. It separates and distinguishes and he does not think Lincoln needs to go down that path. His biggest concern is the corner lot situation of economic taking. Because of the power of the economics of this development, there is one lone individual landowner being left without the options that he desires for his property. How is it that just because of this circumstance that he can be pushed out of his preference to be there? Steward will vote against the project.

Taylor believes in everyone making a buck and it looks like we have to choose between a gentleman and the developer. He is not very comfortable with that. He likes the idea of the development and the concept, but he just cannot leave Mr. McKeeman out for that. If there was a way to handle the situation better, then he would feel better about it.

Hunter believes there is a huge misconception about gated communities because if you think there is a guard with a gun, it's not like that. It is predominately something that basically takes communities like Colonial Hills and puts restriction on traffic flowing through the development like a major street. It is more of an aesthetic thing than

anything else. For the purpose of bringing a new development and a very handsome community, she believes we have to consider all of the issues. This isn't the first development to go in that area. She thinks it was probably unfortunately just a matter of time. She would like to own the corner property because she believes it gets extremely valuable with whatever is built up around it. She could see it becoming a commercial corner.

Duvall believes this is an absolutely tremendous project. It is a real feather in Lincoln's hat to see something of this caliber. We can learn a lot from it.

With respect to the corner property, Schwinn pointed out that the CUP was done on this property in 1998. The property owner chose not to be involved in the CUP at that time. He has been approached again and has chosen not to be involved. Maybe there is more here than what we see. We need to take that into consideration. The developer could go on around him as it sits now with the R-3 zoning. He is on the corner of a major intersection that will become an even more major intersection in the future. He believes that since McKeeman has not been involved in the last two years, it is not the Planning Commission's concern as to what to do.

Taylor stated that with that information, he will change his mind.

Main motion, with amendment to Condition #1.1.19, carried 5-2: Duvall, Hunter, Krieser, Taylor and Schwinn voting 'yes'; Steward and Newman voting 'no'; Bayer and Hopkins absent.